Supreme Court, U.S.
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No. 01-1774

In The Supreme Court Of The United States

STATE OF MARYLAND,
Petitioner,

v.

DWAYNE ANTHONY DRURY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF OHIO AND 18 OTHER STATES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether *Miranda* warnings must be given to a suspect in police custody before police may show evidence to the suspect and tell the suspect that the evidence will be examined for fingerprints.

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STATEMENT OF *AMICI* INTEREST

The State of Ohio and 18 other amici States urge the Court to grant Maryland's petition. Law enforcement officers in every State strive earnestly to respect the constitutional rights of criminal suspects, even as those officers gather information that will solve crimes and convict the guilty. And while all agree that certain warnings must be given by the police before a suspect's statement made during custodial interrogation can be admitted in evidence – a constitutional principle that "has become embedded in routine police practice to the point where the warnings have become part of our national culture," *Dickerson v. United States*, 530 U.S. 428, 443 (2000) – this Court's guidance is needed now on the particular question that Maryland raises here.

Before the law enforcement officer in this case asked any questions of respondent Drury – who had not received the *Miranda* warnings and who was admittedly in custody for questioning in connection with his suspected role in a recent burglary – the officer simply placed some evidence in front of Drury. That act alone, coupled with the officer's statement that the evidence would be sent away for examination by a fingerprint expert, prompted Drury to offer incriminating statements. Though the officer then promptly recited the *Miranda* warnings to respondent Drury, the court below held that his pre-*Miranda* statements were the product of custodial "interrogation." The state trial court's admission of those statements was reversible error, according to the court of appeals.

State and federal courts are now divided on whether that broad reading of the term "interrogation" is appropriate. In the wake of those decisions, state and local law enforcement officers are left to wonder whether they must provide *Miranda* warnings before actual questioning begins,

or whether instead they must give those warnings at some earlier point before the officers do anything in the suspect's presence. The States seek clear direction from the Court in this area of the law, for law enforcement officers frequently confront the very situation that the officer did in this case.

REASONS FOR GRANTING THE WRIT

I. The Judgment Below Is Not Consistent With *Miranda* Or With The Constitutional Principles That Underlie That Decision.

No one doubts that *Miranda* warnings must be given once police questioning is about to begin, but when criminal suspects make voluntary statements before then, the rationale underlying *Miranda* should not compel exclusion of those statements. The ruling below over-protects criminal suspects before police questioning begins, and reads too much into the term "interrogation." While the States are free to impose extra *Miranda*-warnings requirements on law enforcement officers in cases like this, nothing in the Constitution compels them to do so.

In this case, the respondent suspect made key self-incriminating statements about a recent burglary, and he did so before the police had asked him any questions. Yet those pre-*Miranda* statements were inadmissible at trial, according to the court of appeals, because the respondent offered those statements after seeing some of the evidence and after learning that the police intended to send the evidence to a fingerprint examiner. That decision undoing a state criminal conviction goes beyond any requirement imposed on the government by *Miranda v. Arizona*, 384 U.S. 436 (1966), or by the Fifth Amendment, and the decision warrants review in this Court now.

A. Showing Evidence To A Suspect Does Not Raise The Same Concerns About Coercion That Police Questioning Does.

As *Miranda* and later cases have found, "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements," *Dickerson*, 530 U.S. at 435. It is of course that coercive process that warrants the reading of the constitutionally-mandated *Miranda* warnings for each suspect before custodial interrogation begins. But the approach of the court of appeals shifts the *Miranda* warnings obligation ever-earlier to a point before the time when the concerns underlying *Miranda* come into play. All agree in this case that true police questioning had not begun when respondent Drury saw the evidence and offered his incriminating statements, and nothing about the situation that Drury faced compelled him to do or say anything in response to the pre-interrogation actions of the police.

As the dissenting judges on the court of appeals explained, the kind of police action that occurred in this case will never subject a suspect to the consequences that flow once a police officer actually poses a question to a suspect. When faced with such a question, the suspect must (1) answer truthfully with information that may incriminate him, or (2) answer falsely, thereby perhaps giving the police statements that will be admitted against him at trial and proven untrue through the testimony of other witnesses, or (3) defy the officer by remaining silent.

The *Miranda* warnings aim to protect criminal suspects from that "cruel trilemma of self-accusation, perjury or contempt" that "defined the operation of the Star Chamber." *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990) (quotations omitted). But just as a voluntary pre-*Miranda*-warnings statement was admissible in *Muniz*, where the suspect offered that incriminating statement in response to

police instructions about field sobriety tests, so respondent Drury's statement was properly admitted at *his* trial, where he volunteered that statement at the mere sight of the evidence in police custody. Drury never faced the truth-falsity-silence predicament that true interrogation imposes on suspects in police custody.

To be sure, this Court has said that words or actions on the part of the police that are "reasonably likely to evoke an incriminating response from a suspect" amount to interrogation under *Miranda*. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). But just as the police activity in that case amounted to "nothing more than a dialogue between the two officers to which no response from the respondent was invited," and so could not be described as interrogation or the "'functional equivalent' of questioning," 446 U.S. at 302, so too the actions of the officer in this case – physically laying out some evidence and telling the respondent that it would be sent off for a fingerprint examination – did not call for a response from him.

B. The Risk Of False Confessions, While Perhaps Significant When Officers Pose Leading Questions, Is Slight In Cases Like This.

Though some commentators have expressed appropriate concern in recent years about false confessions – a problem that arguably "threaten[s] the quality of criminal justice in America," Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. Crim. L. & Criminology 429, 493 (1998) – a false confession seems very unlikely when a suspect is simply shown some evidence, as happened in this case. In much the same way that excited utterances are not excluded by the hearsay rule under Fed. R. Evid. 803 – presumably

because the excited speaker's statement is viewed as particularly genuine and trustworthy – courts can likewise presume that few suspects will give a false confession at the mere sight of evidence from the crime scene.

Professor Amar has argued that exclusion of unreliable evidence is the Fifth Amendment's focus: The "rationale of the Self-Incrimination Clause [is] best read [as] reliability. Compelled testimony may be partly or wholly misleading and unreliable; even an innocent person may say seemingly inculpatory things under pressure and suspicion and when flustered by trained inquisitors." Akhil Reed Amar & Renee B. Lettow, *Fifth Amendment First Principles: The Self-Incrimination Clause*, 93 Mich. L. Rev. 857, 900-01 (1995). The States – committed as we are to maintaining judicial systems that protect the constitutional rights of the innocent and the guilty alike – certainly embrace Amar's view of the Fifth Amendment. But to the extent that *Miranda* warnings protect even innocent suspects from their own tendencies to falsely incriminate themselves during the course of sometimes-grueling police interrogations, the link between those warnings and legitimate concerns about false confessions seems particularly weak in cases like this one, where the suspect made his incriminating remarks before the officer had asked any questions at all.

In fact, of course, seeing the evidence before questioning began gave respondent Drury valuable insight into the case against him. With that information in mind, he could consider how to respond effectively once police questioning began, and could avoid the trap that less-informed suspects might walk into before realizing that some valuable piece of physical evidence was already in police custody.

C. The States Are Entitled To Protect Suspects In The Way That The Ruling Below Has Done, But The Fifth Amendment Does Not Compel That Result.

Just as some States and a number of commentators have concluded that virtually every police interrogation should be videotaped, so we understand the view of some who argue that *Miranda* warnings ought to be given at the first available opportunity in every case. But of course the question presented by Maryland is whether the *Constitution* compelled the officer in this case to give those warnings to the respondent before showing the evidence to him. We States remain free to give greater protections to criminal suspects and defendants if we choose, but absent a pre-questioning *Miranda*-warnings requirement in the Fifth Amendment, and absent state constitutional or statutory requirements that compel the reading of *Miranda* warnings well before police questioning begins, local law enforcement officers should be free to engage in the kind of reasonable conduct that the officer in this case pursued.

The States and local law enforcement officers work hard to consistently balance effective crime-solving and truth-seeking techniques with the individual constitutional rights that we all value. As Maryland's petition explains, law enforcement officers are now uncertain about the timing of their obligation to read the *Miranda* warnings to suspects. While the particularly careful officer may very well, in an abundance of caution, opt to recite the warnings early and often whenever a suspect is within earshot – and while some States may even choose, through their own statutes or constitutions, to require officers to do exactly that – no one benefits from the current uncertainty over the timing of law enforcement officers' *federal constitutional* obligations in situations like the one that this officer faced.

This case presents a sound vehicle for a reexamination of the circumstances in which pre-interrogation *Miranda* warnings must be given. We believe that an officer's act of providing information – whether through the display of evidence or through statements about that evidence – can give a suspect valuable insights about his situation without compelling him to do or say anything incriminating. Nothing in the Fifth Amendment or in the Due Process Clause of the Fourteenth Amendment bars officers from providing that kind of information before *Miranda* warnings are given and before actual questioning begins, and the ruling of the court below holding otherwise deserves review in this Court now.

II. Lower Courts Are Divided On The Question.

State and federal courts need direction on this issue, as do law enforcement officers in each of the amici States.

Several federal circuit courts have held that a statement by a police officer to a suspect or to others – or even the act of showing evidence to a suspect, as in this case – does not amount to the kind of "interrogation" that triggers the need for *Miranda* warnings (or does not amount to improper post-*Miranda* interrogation of a suspect who has requested counsel or has invoked his right to remain silent). See, e.g., *United States v. Payne*, 954 F.2d 199, 203 (4th Cir. 1992) (a law enforcement officer did not interrogate a suspect when the officer simply told the suspect that a gun had been found at his house), *cert. denied*, 503 U.S. 988 (1992); *Boykin v. Leapley*, 28 F.3d 788, 791-92 (8th Cir. 1994) (an officer did not interrogate a suspect when the officer said that the suspect's shoes had probably been sent off for examination by crime-scene investigators); *United States v. Blackstone*, 56 F.3d 1143, 1144, 1146 (9th Cir. 1995) (an officer's act of removing a suspect's gun from a bag and placing it on a desk in front of the suspect did not

constitute interrogation, so the suspect's statement "I was afraid you'd find that" was admissible despite the absence of *Miranda* warnings).

Several state courts have reached similar conclusions. See, e.g., *Lewis v. State*, 509 So.2d 1236, 1237 (Fla. App., 4th Dist. 1987) (showing a videotape of a robbery to the robbery suspect did not amount to interrogation), *review denied*, 519 So.2d 987 (Fla. 1987); *Carruthers v. State*, 528 S.E.2d 217, 224 (Ga. 2000) ("handing Carruthers a copy of the search warrant did not constitute interrogation"), *cert. denied*, 531 U.S. 934 (2000); *People v. Benjamin*, 300 N.W.2d 661, 666-67 (Mich. App. 1980) (an officer did not interrogate a suspect when he "removed the knives from defendant's purse and held them up" in front of her); *State v. Temple*, 273 S.E.2d 273, 278 (N.C. 1981) ("to present a person in custody with evidence recovered from the scene of the crime is not 'interrogation' within the meaning of the *Miranda* decision").

In contrast, several courts – like the court below – have treated as interrogation a police officer's act of showing evidence to a suspect in custody. See, e.g., *People v. Taylor*, 223 Cal. Rptr. 638, 639, 641 (Cal. App., 3rd Dist. 1986) (before an officer showed a bracelet and other items from a crime scene to a suspect, "*Miranda* warnings were required"); *Hawaii v. Uganiza*, 702 P.2d 1352, 1355 (Haw. 1985) (presenting to a suspect the written statements of several witnesses constituted interrogation of the suspect); *Maine v. Nixon*, 599 A.2d 66, 67 (Maine 1991) (after a suspect asked for a lawyer, a detective violated the Fifth Amendment by pushing a diagram toward the suspect and saying "You might find this interesting."); *People v. Ferro*, 472 N.E.2d 13, 14-15 (N.Y. 1984) (placing several stolen furs in front of a suspect in custody amounted to interrogation), *cert. denied*, 472 U.S. 1007 (1985).

The uncertainty generated by these differing approaches shows that guidance from this Court is needed now on this issue of recurring importance to the States.

CONCLUSION

For the foregoing reasons, the *amici* States urge the Court to grant the petition.

Respectfully submitted,

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